

STATE OF MICHIGAN
IN THE SUPREME COURT

MICHIGAN ASSOCIATION OF
GOVERNMENTAL EMPLOYEES, a
Michigan nonprofit membership
corporation,

Plaintiff-Appellee,

v.

STATE OF MICHIGAN AND OFFICE OF
THE STATE EMPLOYER,

Defendants-Appellants.

Supreme Court No. 147511

Court of Appeals No. 304920

Court of Claims No. 10-000037-MK

STATE OF MICHIGAN AND OFFICE OF THE STATE EMPLOYER'S REPLY
IN SUPPORT OF THEIR APPLICATION FOR LEAVE TO APPEAL

147511 /
reply

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REPLY ARGUMENT

The most significant telling thing about MAGE's response is what it does not dispute: it does not deny that the issues presented are significant public-interest issues that warrant this Court's review. MAGE sidesteps this point for good reason, for it is hard to deny that the Civil Service Commission's authority, derived from the state constitution itself, to address these pay-setting issues is an important question of state law.

And that is not the only issue that the response overlooks. MAGE does not respond to the separation-of-powers principles that undergird the doctrine of primary jurisdiction, even though those principles explain why the Civil Service Commission is the proper entity to apply its own rules to MAGE, an entity created and controlled by the Civil Service Rules. On the merits of its breach-of-contract claim, MAGE does not explain how it suffered any damage, given that it received from the Coordinated Compensation Panel the very benefit that the consensus agreement sought—a recommendation for a 3% increase for NEREs. Nor does it explain why the State and the State Employer could be liable for the Civil Service Commission's independent decision, as the ultimate decisionmaker, to reject that increase. And MAGE did not even address the arguments about mootness.

In *Rinaldo's Construction Corp v Michigan Bell Telephone Co*, this Court held that “the doctrine of primary jurisdiction *requires dismissal* of plaintiff's claim because it arises solely out of the contractual relationship between the telephone company and the plaintiff, its customer, and is limited by Tariff 7.” 454 Mich 65,

67; 559 NW2d 647 (1997) (emphasis added). The situation here is directly parallel, and also requires dismissal. MAGE is an entity created by the Civil Service Rules and having only the powers granted by the Rules, and MAGE's breach-of-contract claim arises solely out of the relationship governed by those Rules. This is precisely the type of situation that should be resolved by the administrative process.

The fact that a regulation (Regulation 6.06, Standard 4D2) mentions that the Office of the State Employer and limited recognition organizations such as MAGE can agree to make the same recommendation to the Coordinated Compensation Panel does not change this. Simply put, agreeing to make the same recommendation does not create a contract. Consider, for example, two employees who are planning on going out to lunch with their boss, who, being a controlling boss, ultimately will decide which restaurant to go to. If the two employees agree beforehand that each will recommend the Olive Garden, that agreement does not create a contract between them. One of them cannot seek recourse in the courts if, when the time for the recommendation comes, the other changes his mind and recommends Applebee's. And even setting aside the absence of consideration, neither could prove that the breach caused any damages resulting from the final restaurant choice, because the boss makes the ultimate decision anyway—the recommendations have no binding effect. That is essentially what happened here, because the Commission, even after receiving the recommendation that MAGE wanted, rejected that recommendation.

CONCLUSION AND RELIEF REQUESTED

As explained in the application, this case involves threshold jurisdictional questions of significant practical and legal significance both to the State and its employees. The State Defendants respectfully request this Court 1) grant this application; 2) reverse the Court of Appeals' disposition on this breach-of-contract claim; 3) and remand to the trial court with instructions to grant summary disposition to the State on this claim.

Respectfully submitted,

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